

DAVID PORTER, CHAIRMAN  
CHRISTI CRADDICK, COMMISSIONER  
RYAN SITTON, COMMISSIONER



LINDIL C. FOWLER, JR., GENERAL COUNSEL

## RAILROAD COMMISSION OF TEXAS

### OFFICE OF GENERAL COUNSEL

#### MEMORANDUM

**TO:** Chairman David Porter  
Commissioner Christi Craddick  
Commissioner Ryan Sitton

**FROM:** Haley Cochran, Attorney— General Counsel Section  
Office of General Counsel *HJC*

**THROUGH:** Lindil C. Fowler, General Counsel *[Signature]*

**DATE:** September 8, 2015

**SUBJECT:** Proposed amendments to 16 TAC §3.78, Relating to  
Fees and Financial Security Requirements; O&G  
Docket No. 20-0297968

September 15, 2015		
Approved	Denied	Abstain
<i>CC</i> <i>JP</i> <i>RL</i>	<i>[Signature]</i>	

Attached is Staff's recommendation to publish proposed amendments to 16 Tex. Admin. Code §3.78, relating to Fees and Financial Security Requirements. These rule amendments are recommended in order to implement the Commission's authority pursuant to Tex. Nat. Res. Code §91.0115 to charge a fee for each request for a letter of determination stating the total depth of surface casing required for an oil or gas well. The fee received in connection with requests for groundwater protection determination letters will be subject to the surcharge in accordance with Tex. Nat. Res. Code §§81.070 and 81.067. However, the proposed amendments do not propose changes to the current surcharge amount imposed under rule §3.78(n).

Staff requests the Commission's approval to publish these proposed amendments in the *Texas Register* for a 30-day comment period. If approved at conference on September 15<sup>th</sup>, the proposal should appear in the October 2<sup>nd</sup> issue of the Texas Register. This proposal and an online comment form would also be made available on the Commission's website by September 16<sup>th</sup>, giving interested persons more than two additional weeks to review and submit comments to the Commission.

cc: Lori Wrotenbery, Director – Oil and Gas Division  
Leslie Savage, Assistant Director of Technical Permitting – Oil and Gas Division  
Wei Wang, Chief Financial Officer

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1           The Railroad Commission of Texas (Commission) proposes to amend §3.78, relating to Fees and  
2 Financial Security Requirements, in order to implement a fee for groundwater protection determination  
3 letters as provided in Texas Natural Resources Code, §91.0115(b). The proposed amendments also  
4 correct a form reference.

5           Article 2 of House Bill 2694 (HB 2694), enacted by the 82nd Texas Legislature (Regular Session,  
6 2011) amended Texas Natural Resources Code, Chapter 91, and Texas Water Code, Chapter 27, to  
7 transfer the Surface Casing Unit from the Texas Commission on Environmental Quality to the Railroad  
8 Commission of Texas. HB 2694 added §91.0115, Texas Natural Resources Code, relating to Casing;  
9 Letter of Determination, which transferred the responsibility for issuing a letter of determination stating  
10 the total depth of surface casing required for an oil or gas well by §91.011. Section 91.0115(b) authorized  
11 the Railroad Commission to charge a fee in an amount to be determined by the Railroad Commission for  
12 a letter of determination and to charge an additional fee not to exceed \$75 for processing a request to  
13 expedite a letter of determination. These proposed amendments to §3.78 implement the Commission's  
14 authority to charge a fee for each request for a determination letter. The Commission will continue to  
15 charge an additional fee for a request to expedite a determination letter.

16           The Commission proposes new subsection (a)(14) to add a definition for "Groundwater  
17 protection determination letter" to mean "a letter of determination stating the total depth of surface casing  
18 required for a well in accordance with Texas Natural Resources Code, §91.011."

19           The Commission proposes to amend §3.78(b)(14) to add new subparagraph (A) to require a  
20 nonrefundable fee of \$100 with each individual request for a groundwater protection determination letter.  
21 The Commission proposes to redesignate the existing language of §3.78(b)(14) concerning the fee for  
22 each individual application for an expedited letter of determination as §3.78(b)(14)(B). Pursuant to  
23 current §3.78(n), for which no amendments are proposed, a 150% surcharge would apply to the \$100 fee,

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1 for a total cost of \$250 for each request for a groundwater protection determination letter. If an expedited  
2 letter is requested, the expedite fee and its surcharge will be charged in addition to the regular fee.

3 The Commission also proposes to amend §3.78(b)(13)(A) to correct a reference to Form W-3X.

4 Leslie Savage, Assistant Director for Technical Permitting, Oil and Gas Division, has determined  
5 that for each year of the first five years the amendments as proposed will be in effect, the fiscal  
6 implications with regard to the Commission's overall budget as a result of enforcing or administering the  
7 amendments will be a maximum cost of approximately \$60,000. This cost is based on the estimated 600  
8 hours of programming required to modify existing programs to add a new fee code and surcharge, modify  
9 the Commission's payment portal to accommodate the new fee code, and re-certify the new fee code  
10 through the payment portal. There will be no fiscal effect on local government.

11 Ms. Savage has determined that for each year of the first five years that the amendments will be  
12 in effect the primary public benefit as a result of the proposed amendments will be the recovery of funds  
13 necessary for the Commission to perform the work required to prepare groundwater protection  
14 determination letters, including the study and evaluation of electronic access to geologic data and surface  
15 casing depths necessary to protect usable groundwater in this state. The Commission receives at least  
16 18,000 requests for groundwater protection determination letters each year. Pursuant to current §3.78(n),  
17 which is not included in this rulemaking, a 150% surcharge would apply to the \$100 fee. This surcharge  
18 would be used to recover the costs of performing the functions specified by Texas Natural Resources  
19 Code §81.068, including oil and gas monitoring and inspections, oil and gas remediation, oil and gas well  
20 plugging, alternative fuels programs under §81.0681, public information and services related to those  
21 activities, and administrative costs and state benefits for personnel involved in those activities.

22 Ms. Savage has determined that for each year of the first five years that the amendments will be  
23 in effect, the economic cost for persons required to comply with the proposed amendments will be \$250  
24 for each request for a groundwater protection determination letter.



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1 Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic  
2 Effect, requires that, before adopting a rule that may have an adverse economic effect on small businesses  
3 or micro-businesses, a state agency prepare an economic impact statement and a regulatory flexibility  
4 analysis. The economic impact statement must estimate the number of small businesses subject to the  
5 proposed rule and project the economic impact of the rule on small businesses. A regulatory flexibility  
6 analysis must include the agency's consideration of alternative methods of achieving the purpose of the  
7 proposed rule. If consistent with the health, safety, and environmental and economic welfare of the state,  
8 the analysis must consider the use of regulatory methods that will accomplish the objectives of applicable  
9 rules while minimizing adverse impacts on small businesses. The statute defines "small business" as a  
10 legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of  
11 making a profit; is independently owned and operated; and has fewer than 100 employees or less than \$6  
12 million in annual gross receipts. A "micro-business" is a legal entity, including a corporation,  
13 partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently  
14 owned and operated; and has no more than 20 employees.

15 Entities that perform activities under the jurisdiction of the Commission are not required to report  
16 to the Commission their number of employees or their annual gross receipts, which are elements of the  
17 definitions of "micro-business" and "small business" in Texas Government Code, §2006.001; therefore,  
18 the Commission has no factual bases for determining whether any persons who request groundwater  
19 protection determination letters (i.e., persons who drill and plug wells under Commission jurisdiction)  
20 will be classified as small businesses or micro-businesses, as those terms are defined. However, because  
21 small and micro-businesses represent a large percentage of entities operating in the crude oil and natural  
22 gas extraction industry, and based on the information available to the Commission regarding oil and gas  
23 operators, Ms. Savage has concluded that it is likely that many of the businesses affected by the proposed  
24 amendments would be classified as small businesses, and possible that some could be classified as micro-

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1 businesses, as those terms are defined in Texas Government Code, §2006.001. The proposed amendments  
2 would result in increased costs in drilling and/or plugging a well, as a groundwater determination letter is  
3 required for these activities. However, Ms. Savage anticipates that the adverse impact to any one business  
4 (approximately \$250 for the cost of each request for a groundwater determination letter, as described  
5 above) will be relatively small compared to the overall costs associated with drilling a well. Advanced  
6 Resources International (using API data) has reported that in 2007, the US oil and gas sector spent \$226  
7 billion drilling and equipping some 54,300 wells, for an average cost of \$4.16 million per well. In 2007, it  
8 cost \$4 million to drill an oil well and \$3.9 million to drill a natural gas well, with an average cost of  
9 \$574/foot of depth. In 2011, the cost to drill and complete a well in the Eagle Ford Shale ranged between  
10 \$5.5 and 9.5 million. The lower ranges of costs reflect vertical wells, which are generally drilled by  
11 smaller operators.

12 Also, the proposed rule requirements do not vary between large businesses and small or micro  
13 businesses. The overall costs attributable to the rule will vary with the individual circumstances of each  
14 entity. However, because the relative number of oil and/or natural gas wells an entity drills or plugs, and  
15 the corresponding number of requests for groundwater determination letters, should be proportionate to  
16 the relative size of the entity, the Commission anticipates that the proposal is likely to have a smaller cost  
17 impact on small or micro-businesses. Moreover, the Commission has determined that, because the  
18 purpose of the proposed amendments is to recover costs incurred in association with issuing groundwater  
19 protection determination letters, and because the letters prevent pollution of surface and subsurface  
20 waters, it is not feasible to reduce any economic impact of the rules on small or micro-businesses without  
21 compromising those efforts.

22 In preparing the proposed rule, the Commission considered whether the purpose of the rule  
23 amendment could still be achieved if (1) small or micro-businesses pay a reduced fee for requests for  
24 groundwater determination letters, or (2) small or micro-businesses are exempt from the determination

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1 letter fee requirement. The Commission rejected these alternatives because the purpose of the rule  
2 amendment is to recover costs incurred in association with processing and preparing groundwater  
3 protection determination letters. The alternatives would not only impact the amount of funds the  
4 Commission could collect, but would also result in new costs to the Commission due to the administrative  
5 burden of determining whether an individual request qualifies for a fee exemption or reduction.

6 Ms. Savage has also determined that the proposed amendments will not affect a local economy.  
7 Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas  
8 Government Code, §2001.022.

9 Ms. Savage has determined that the amendments do not meet the statutory definition of a major  
10 environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory  
11 analysis conducted pursuant to that section is not required.

12 Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel,  
13 Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at  
14 [www.rrc.texas.gov/legal/rules/comment-form-for-proposed-rulemakings](http://www.rrc.texas.gov/legal/rules/comment-form-for-proposed-rulemakings); or by electronic mail to  
15 [rulescoordinator@rrc.texas.gov](mailto:rulescoordinator@rrc.texas.gov). The Commission will accept comments until noon (12:00 p.m.) on  
16 Monday, November 2, 2015, which is 31 days after publication in the *Texas Register*. Comments should  
17 refer to O&G Docket No. 20-0297968. The Commission finds that this comment period is reasonable  
18 because the proposal and an online comment form will be available on the Commission's web site more  
19 than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional  
20 time to review, analyze, draft, and submit comments. The Commission encourages all interested persons  
21 to submit comments no later than the deadline. The Commission cannot guarantee that comments  
22 submitted after the deadline will be considered. For further information, call Ms. Savage at (512) 463-  
23 7308. The status of Commission rulemakings in progress is available at  
24 [www.rrc.texas.gov/legal/rules/proposed-rules](http://www.rrc.texas.gov/legal/rules/proposed-rules).

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1           The Commission proposes the amendments to §3.78 pursuant to Texas Natural Resources Code,  
2   §§81.051 - 81.052, which provide the Commission with jurisdiction over all persons owning or engaged  
3   in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for  
4   governing and regulating persons and their operations under Commission jurisdiction; Texas Natural  
5   Resources Code §§81.067 - 81.068, relating to the Oil and Gas Regulation and Cleanup Fund; Texas  
6   Natural Resource Code, §81.070, which authorizes the Commission to impose surcharges on fees; Texas  
7   Natural Resources Code, §91.101, which authorizes the Commission to prevent pollution of surface water  
8   or subsurface water from oil and gas operations; Texas Natural Resources Code, §91.011, which  
9   authorizes the Commission to adopt rules concerning the depth of well casing; Texas Natural Resources  
10   Code, §91.0115, which requires the Commission to issue groundwater protection determination letters  
11   and authorizes the Commission to charge an application fee and an expedite application fee; and Texas  
12   Water Code, §27.033, which requires a person applying for a permit under Chapter 27 to submit with the  
13   application a letter of determination from the Commission stating that drilling and using the disposal well  
14   and injecting oil and gas waste into the subsurface stratum will not endanger the freshwater strata in that  
15   area and that the formation or stratum to be used for the disposal is not freshwater sand.

16           Texas Natural Resources Code, §§81.051 - 81.052, 81.067 - 81.068, 81.070, 91.101, 91.011, and  
17   91.0115, and Texas Water Code §27.033 are affected by the proposed amendments.

18           Statutory authority: Texas Natural Resources Code §§81.051, 81.052, 81.067 - 81.068, 81.070,  
19   91.101, 91.011, and 91.0115, and Texas Water Code, §27.033.

20           Cross-reference to statute: Texas Natural Resources Code, Chapters 81 and 91, and Texas Water  
21   Code, Chapter 27.

22   §3.78. Fees and Financial Security Requirements.

23           (a) Definitions. The following words and terms, when used in this section, shall have the  
24   following meanings, unless the context clearly indicates otherwise:



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1 (1) Violation--Noncompliance with a Commission rule, order, license, permit, or  
2 certificate relating to safety or the prevention or control of pollution.

3 (2) Outstanding violation--A violation for which:

4 (A) either:

5 (i) a Commission order finding a violation has been entered and all  
6 appeals have been exhausted; or

7 (ii) an agreed order between the Commission and the organization  
8 relating to a violation has been entered; and

9 (B) one or more of the following conditions still exist:

10 (i) the conditions that constituted the violation have not been corrected;

11 (ii) all administrative, civil, and criminal penalties, if any, relating to the  
12 violation of such Commission rules, orders, licenses, permits, or certificates have not been paid; or

13 (iii) all reimbursements of any costs and expenses assessed by the  
14 Commission relating to the violation of such Commission rules, orders, licenses, permits, or certificates  
15 have not been paid.

16 (3) Commercial facility--A facility whose owner or operator receives compensation from  
17 others for the storage, reclamation, treatment, or disposal of oil field fluids or oil and gas wastes that are  
18 wholly or partially trucked or hauled to the facility and whose primary business purpose is to provide  
19 these services for compensation if:

20 (A) the facility is permitted under §3.8 of this title (relating to Water Protection);

21 (B) the facility is permitted under §3.57 of this title (relating to Reclaiming Tank  
22 Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials);

23 (C) the facility is permitted under §3.9 of this title (relating to Disposal Wells)  
24 and a collecting pit permitted under §3.8 is located at the facility; or



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1 (D) the facility is permitted under §3.46 of this title (relating to Fluid Injection  
2 into Productive Reservoirs) and a collecting pit permitted under §3.8 is located at the facility.

3 (4) Financial security--An individual performance bond, blanket performance bond, letter  
4 of credit, or cash deposit filed with the Commission.

5 (5) Bay well--Any well under the jurisdiction of the Commission for which the surface  
6 location is either:

7 (A) located in or on a lake, river, stream, canal, estuary, bayou, or other inland  
8 navigable waters of the state and which requires plugging by means other than conventional land-based  
9 methods, including, but not limited to, use of a barge, use of a boat, dredging, or building a causeway or  
10 other access road to bring in the necessary equipment to plug the well; or,

11 (B) located on state lands seaward of the mean high tide line of the Gulf of  
12 Mexico in water of a depth at mean high tide of not more than 100 feet that is sheltered from the direct  
13 action of the open seas of the Gulf of Mexico.

14 (6) Land well--Any well subject to Commission jurisdiction for which the surface  
15 location is not in or on inland or coastal waters.

16 (7) Offshore well--Any well subject to Commission jurisdiction for which the surface  
17 location is on state lands in or on the Gulf of Mexico, that is not a bay well.

18 (8) Officers and owners--Any persons owning or controlling an organization including  
19 officers, directors, general partners, sole proprietors, owners of more than 25% ownership interest, any  
20 trustee of an organization, and any person determined by a final judgment or final administrative order to  
21 have exercised control over the organization.

22 (9) Letter of credit--An irrevocable letter of credit issued:

23 (A) on a Commission-approved form;

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(B) by and drawn on a third party bank authorized under state or federal law to do business in Texas; and

(C) renewed and continued in effect until the conditions of the letter of credit have been met or its release is approved by the Commission or its authorized delegate.

(10) Bond--A surety instrument issued:

(A) on a Commission-approved form;

(B) by and drawn on a third party corporate surety authorized under state law to issue surety bonds in Texas; and

(C) renewed and continued in effect until the conditions of the bond have been met or its release is approved by the Commission or its authorized delegate.

(11) Well-specific plugging insurance policy--An insurance policy that:

(A) is approved by the Texas Department of Insurance;

(B) is issued by an insurer authorized under state law to issue a well-specific plugging insurance policy in Texas;

(C) names the Commission as the owner and contingent beneficiary of the policy;

(D) names a primary beneficiary who agrees to plug the specified well bore;

(E) is fully prepaid and cannot be canceled or surrendered;

(F) provides that the policy continues in effect until the well bore has been plugged as required by the Commission;

(G) provides that benefits will be paid when, but not before, the specified well bore has been plugged; and

(H) provides that benefits that will equal or exceed:

(i) \$2 per foot for each foot of well depth for land wells;

(ii) \$60,000 for bay wells; or

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(iii) \$100,000 for offshore wells.

(12) Director--The director of the Commission's Oil and Gas Division or the director's delegate.

(13) Escrow funds--Funds deposited with the Commission as part of an application for a plugging extension for an inactive land well.

**(14) Groundwater protection determination letter--A letter of determination stating the total depth of surface casing required for a well in accordance with Texas Natural Resources Code, §91.011.**

(b) Filing fees. The following filing fees are required to be paid to the Railroad Commission.

(1) With each application or materially amended application for a permit to drill, deepen, plug back, or reenter a well, the applicant shall submit to the Commission a nonrefundable fee of:

(A) \$200 if the proposed total depth of the well is 2,000 feet or less;

(B) \$225 if the proposed total depth of the well is greater than 2,000 feet but less than or equal to 4,000 feet;

(C) \$250 if the proposed total depth of the well is greater than 4,000 feet but less than or equal to 9,000 feet; or

(D) \$300 if the proposed total depth of the well is greater than 9,000 feet.

(2) An application for a permit to drill, deepen, plug back, or reenter a well will be considered materially amended if the amendment is made for a purpose other than:

(A) to add omitted required information;

(B) to correct typographical errors; or

(C) to correct clerical errors.

(3) An applicant shall submit an additional nonrefundable fee of \$150 when requesting that the Commission expedite the application for a permit to drill, deepen, plug back, or reenter a well.

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1                   (4) With each individual application for an exception to any rule or rules in this chapter,  
2 the applicant shall submit to the Commission a nonrefundable fee of \$150, except as provided in  
3 paragraph (5) of this subsection.

4                   (5) With each application for an exception to any rule or rules in this chapter that includes  
5 an exception to §3.37 of this title (relating to Statewide Spacing Rule) (Statewide Rule 37) or §3.38 of  
6 this title (relating to Well Densities) (Statewide Rule 38), the applicant shall submit a nonrefundable fee  
7 of \$200.

8                   (6) With each application for an oil and gas waste disposal well permit, the applicant  
9 shall submit to the Commission a nonrefundable fee of \$100 per well.

10                  (7) With each application for a fluid injection well permit, the applicant shall submit to  
11 the Commission a nonrefundable fee of \$200 per well. Fluid injection well means any well used to inject  
12 fluid or gas into the ground in connection with the exploration or production of oil or gas other than an oil  
13 and gas waste disposal well.

14                  (8) With each application for a permit to discharge to surface water other than a permit  
15 for a discharge that meets national pollutant discharge elimination system (NPDES) requirements for  
16 agricultural or wildlife use, the applicant shall submit to the Commission a nonrefundable fee of \$300.

17                  (9) If a certificate of compliance for an oil lease or gas well has been canceled for  
18 violation of one or more Commission rules, the operator shall submit to the Commission a nonrefundable  
19 fee of \$300 for each severance or seal order issued for the well or lease before the Commission may  
20 reissue the certificate pursuant to §3.58 of this title (relating to Certificate of Compliance and  
21 Transportation Authority; Operator Reports) (Statewide Rule 58).

22                  (10) With each application for issuance, renewal, or material amendment of an oil and  
23 gas waste hauler's permit, the applicant shall submit to the Commission a nonrefundable fee of \$100.



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1 (11) With each Natural Gas Policy Act (15 United States Code §§3301-3432) application,  
2 the applicant shall submit to the Commission a nonrefundable fee of \$150.

3 (12) Hazardous waste generation fee. A person who generates hazardous oil and gas  
4 waste, as that term is defined in §3.98 of this title (relating to Standards for Management of Hazardous  
5 Oil and Gas Waste), shall pay to the Commission the fees specified in §3.98(z).

6 (13) Inactive well extension fee.

7 (A) For each well identified by an operator in an application for a plugging  
8 extension based on the filing of an abeyance of plugging report on Commission Form W-3X [~~W3-X~~], the  
9 operator must pay to the Commission a non-refundable fee of \$100.

10 (B) For each well identified by an operator in an application for a plugging  
11 extension based on the filing of a fluid level or hydraulic pressure test that is not otherwise required to be  
12 filed by the Commission, the operator must pay to the Commission a non-refundable fee of \$50.

13 (14) Groundwater protection determination letters.

14 (A) With each individual request for a groundwater protection  
15 determination letter, the applicant shall submit to the Commission a nonrefundable fee of \$100.

16 (B) With each individual application for an expedited letter of determination  
17 stating the total depth of surface casing required for a well in accordance with Texas Natural Resources  
18 Code, §91.0115(b), the applicant shall submit to the Commission a nonrefundable fee of \$75[-] in  
19 addition to the fee required by subparagraph (A) of this paragraph.

20 (15) An operator must make a check or money order for any of the aforementioned fees  
21 payable to the Railroad Commission of Texas. If the check accompanying an application is not honored  
22 upon presentment, the Commission or its delegate may suspend or revoke the permit issued on the basis  
23 of that application, the allowable assigned, the exception to a statewide rule granted on the basis of the

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1 application, the certificate of compliance reissued, or the Natural Gas Policy Act category determination  
2 made on the basis of the application.

3 (16) If an operator submits a check that is not honored on presentment, the operator shall,  
4 for a period of 24 months after the check was presented, submit any payments in the form of a credit card,  
5 cashier's check, or cash.

6 (c) Organization Report Fee. An organization report required by Texas Natural Resources Code,  
7 §91.142, shall be accompanied by a fee as follows:

8 (1) for an operator of:

9 (A) not more than 25 wells, \$300;

10 (B) more than 25 but not more than 100 wells, \$500; or

11 (C) more than 100 wells, \$1,000;

12 (2) for an operator of one or more natural gas pipelines, \$225;

13 (3) for an operator of one or more of the following service activities: pollution cleanup  
14 contractor; directional surveying; approved cementer for plugging wells; a cementer of casing strings or  
15 liners; or physically moving or storing crude or condensate, \$300;

16 (4) for an operator of one or more liquids pipelines, \$625;

17 (5) for an operator of all other service activities, or facilities, \$500;

18 (6) for an operator with multiple activities, a total fee equal to the sum of the separate  
19 fees applicable to each category of service activity, facility, pipeline, or number of wells operated shall be  
20 submitted, provided that the total fee for an operator of wells shall not exceed \$1,125; and

21 (7) for an entity not currently performing operations under the jurisdiction of the  
22 Commission, \$300.

23 (d) Financial security. Except for those operators exempted under subsection (g)(7) of this  
24 section, any person, including any firm, partnership, joint stock association, corporation, or other

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organization, required by Texas Natural Resources Code, §91.142, to file an organization report with the Commission must also file financial security in one of the following forms:

- (1) an individual performance bond;
- (2) a blanket performance bond; or
- (3) a letter of credit or cash deposit in the same amount as required for an individual performance bond or blanket performance bond.

(e) Forms for financial security and insurance policies. Operators shall submit well-specific plugging insurance policies, bonds and letters of credit on forms prescribed by the Commission.

(f) Filing deadlines for financial security and insurance policies. Operators shall submit required financial security or well-specific plugging insurance policies at the time of filing an initial organization report, as a condition of the issuance of a permit to drill, recomplete or reenter, upon yearly renewal, or as otherwise required under this section.

(g) Amount of financial security. An operator required to file financial security under subsection (d) of this section shall file financial security described in this subsection.

(1) Types and amounts of financial security required.

(A) A person operating one or more wells may file an individual performance bond, letter of credit, or cash deposit in an amount equal to the sum of \$2.00 for each foot of total well depth for each well operated, excluding any well bore included in a well-specific plugging insurance policy.

(B) A person operating one or more wells may file a blanket bond, letter of credit, or cash deposit to cover all wells for which a bond, letter of credit, or cash deposit is required in an amount equal to the sum of the base amount determined by the total number of wells operated excluding any well bores and/or permits issued to drill, recomplete, or reenter wells included in a well-specific plugging insurance policy. A person performing multiple operations shall be required to file only one

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blanket bond, letter of credit, or cash deposit unless the person is operating a commercial facility, in which case the person also shall comply with the financial security requirements of subsection (l) of this section. The financial security amount shall be at least the base amount determined by the total number of wells operated or \$25,000, whichever is greater. After excluding any well bores and/or permits issued to drill, recompleate or reenter wells included in a well-specific plugging insurance policy, the base amount is determined as follows:

(i) The base amount for a person operating 10 or fewer wells or performs other operations shall be \$25,000.

(ii) The base amount for a person operating more than 10 but fewer than 100 wells shall be \$50,000.

(iii) The base amount for a person operating 100 or more wells shall be \$250,000.

(2) Additional financial security for bay wells.

(A) All operators of bay wells shall file additional financial security of no less than \$60,000 in addition to any other financial security that is required under this section for any other Commission-regulated activities.

(B) For each bay well that is not currently producing oil or gas and has not produced oil or gas within the past 12 months, including injection and disposal wells, the operator shall file additional financial security of \$60,000, unless the well bore is included in a well-specific plugging insurance policy that provides benefits of at least \$60,000. An operator shall not be required to file additional financial security in addition to the \$60,000 amount set under subparagraph (A) of this paragraph if the operator operates only a single inactive bay well.

(C) In the case of a bay well that has been inactive for 12 consecutive months or longer and that is not used for disposal or injection, the well shall remain subject to the provisions of



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1 subparagraph (B) of this paragraph, regardless of any minimal activity, until the well has reported  
2 production of at least 10 barrels of oil for oil wells or 100 mcf of gas for gas wells each month for at least  
3 three consecutive months.

4 (3) Additional financial security for offshore wells.

5 (A) All operators of offshore wells and operators of both bay wells and offshore  
6 wells shall file additional financial security of no less than \$100,000 in addition to any other financial  
7 security that is required under this section for any other Commission regulated activities.

8 (B) For each offshore well that is not currently producing oil or gas and has not  
9 produced oil or gas within the past 12 months, including injection and disposal wells, the operator shall  
10 file an additional amount of financial security of \$100,000, unless the well bore is included in a well-  
11 specific plugging insurance policy that provides benefits of at least \$100,000. An operator shall not be  
12 required to file additional financial security in addition to the \$100,000 amount set under subparagraph  
13 (A) of this paragraph if the operator operates only a single inactive offshore well.

14 (C) In the case of an offshore well that has been inactive for 12 consecutive  
15 months or longer and that is not used for disposal or injection, the well shall remain classified as inactive  
16 for purposes of this section, regardless of any minimal activity, until the well has reported production of  
17 at least 10 barrels of oil for oil wells or 100 mcf of gas for gas wells each month for at least three  
18 consecutive months.

19 (4) Reduction of the additional financial security that is required for bay and/or offshore  
20 wells. An operator may request a reduction of either the additional \$60,000 in financial security required  
21 for all operators of bay wells, or the additional \$100,000 in financial security required for all operators of  
22 offshore wells and operators of both bay wells and offshore wells.

23 (A) The director may administratively approve the reduction if the operator  
24 provides documentation that it currently has acceptable financial assurance in place to satisfy any

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1 financial assurance requirements established by local authorities. The operator must show that the bond or  
2 other form of financial assurance can be called on by or assigned to the Commission under the following  
3 circumstances:

4 (i) a well is likely to pollute or is polluting any ground or surface water  
5 or is allowing the uncontrolled escape of formation fluids from the strata in which they were originally  
6 located; or

7 (ii) a well is not being maintained in compliance with Commission rules  
8 or state law relating to plugging or the prevention or control of pollution; or

9 (iii) the operator has failed to renew and maintain an organization report  
10 filing as required by §3.1 of this title (relating to Organization Report; Retention of Records; Notice  
11 Requirements) and this section.

12 (B) If the director administratively denies a requested reduction, the operator may  
13 request a hearing to determine whether the reduction should be granted.

14 (5) Reduction in additional financial security required for bay and/or offshore wells that  
15 are not actively producing oil and natural gas. An operator may request that Commission consider a  
16 reduction in any additional financial security requirement for the operation of bay and/or offshore wells  
17 that are not actively producing oil and natural gas or that are used for disposal or injection in an amount  
18 not to exceed the remainder of 25% of the operator's certified net worth based on the independently  
19 audited calculation for the most recently completed fiscal year minus the Commission's estimate of the  
20 operator's total plugging liability for all of the operator's active bay and/or offshore wells.

21 (A) The director may administratively grant a full or partial reduction if the  
22 operator meets the following criteria:

23 (i) the operator has either five or fewer bay and offshore wells or at least  
24 half of the operator's bay and offshore wells are actively producing oil and natural gas;

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(ii) the operator provides to the Commission certification of its net worth from an independent auditor that has employed generally accepted accounting principles to confirm the operator's stated net worth based on the most recently available and independently audited calculation;

(iii) the reduction is less than or equal to the remainder of 25% of the operator's certified net worth minus the Commission's estimate of the operator's total plugging liability for all of the operator's active bay and offshore wells;

(iv) none of the operator's wells or operations, including any land-based wells, have been found by Commission staff to be violating or to have violated any Commission rule that resulted in pollution or in any hazard to the health or safety of the public in the last 12 months.

(B) If the director administratively denies the requested reduction, an operator may request a hearing to determine if a full or partial reduction should be granted.

(C) The operator may also request a hearing to challenge the Commission's presumed estimate of the operator's plugging liability for bay and offshore wells as applied to any additional financial security required for any inactive bay and offshore wells. The operator shall present clear and convincing evidence that the estimated plugging liability is less than the amount estimated by the Commission. Notice of the hearing shall be provided by the Commission to the owners of the surface estate and the owners of the mineral estate for any well that is a subject of the requested hearing, and all other affected persons as identified by the operator or otherwise required by the Commission.

(6) Persons with non-well operations not exempted under paragraph (7) of this subsection. A person performing other operations who is not an operator of wells and who is not a person whose only activity is as a first purchaser, survey company, gas nominator, gas purchaser or well plugger shall file financial security in the amount of \$25,000.

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1                   (7) Persons exempt from financial security requirements. No financial security is required  
2 of a person who is not an operator of wells if the person's only activity is as a first purchaser, survey  
3 company, salt water hauler, gas nominator, gas purchaser and/or well plugger.

4                   (8) Persons with both well and non-well operations. If a person is engaged in more than  
5 one activity or operation, including well operation, for which financial security is required, the person is  
6 not required to file financial security for each activity or operation in which the person is engaged. The  
7 person is required to file financial security only in the greatest amount required for any activity or  
8 operation in which the person engages. The financial security filed covers all of the activities and  
9 operations for which financial security is required. The provisions of this paragraph do not exempt a  
10 person from the financial security required under subsection (1) of this section.

11                   (9) Financial security amounts are the minimum amounts required by this section to be  
12 filed. A person may file a greater amount if desired.

13                   (h) Financial security conditions. Any bond, letter of credit, or cash deposit required under this  
14 section is subject to the conditions that the operator will plug and abandon all wells and control, abate,  
15 and clean up pollution associated with the oil and gas operations and activities covered under the required  
16 financial security in accordance with applicable state law and permits, rules, and orders of the  
17 Commission. This section does not apply to a well-specific plugging insurance policy.

18                   (i) Conditions for cash deposits and escrow funds. Operators must tender cash deposits and  
19 escrow funds in United States currency or certified cashiers check only. The Commission or its delegate  
20 will place all cash deposits and escrow funds in a special account within the Oil and Gas Regulation and  
21 Cleanup Fund account. The Commission or its delegate will deposit any interest accruing on cash  
22 deposits and escrow funds into the Oil and Gas Regulation and Cleanup Fund pursuant to Texas Natural  
23 Resources Code, §81.067. The Commission or its delegate may not refund a cash deposit until either  
24 financial security is accepted by the Commission or its delegate as provided for under this section or an



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operator ceases all activity. The Commission or its delegate may release escrow funds to the current operator of the well only if the well for which the operator tendered the escrow funds is either restored to active status or plugged in accordance with Commission rules. In the event that the well is plugged through the use of state funds, the Commission may collect from the escrow account in the amount necessary to reimburse the state for any expenditure.

(j) Well or lease transfer.

(1) The Commission shall not approve a transfer of operatorship submitted for any well or lease unless the operator acquiring the well or lease has on file with the Commission financial security in an amount sufficient to cover both its current operations and the wells or leases being transferred.

(2) Any existing financial security covering the well or lease proposed for transfer shall remain in effect and the prior operator of the well remains responsible for compliance with all laws and Commission rules covering the transferred well until the Commission approves the transfer.

(3) A transfer of a well or lease from one entity to another entity under common ownership is a transfer for the purposes of this section.

(4) The Commission may approve a transfer of operatorship submitted for any well bore included in a well-specific plugging insurance policy if the transfer meets all other Commission requirements.

(k) Reimbursement liability. Filing any form of financial security does not extinguish a person's liability for reimbursement for the expenditure of state oilfield clean-up funds pursuant to Texas Natural Resources Code, §89.083 and 91.113.

(l) Financial security for commercial facilities. The provisions of this subsection shall apply to the holder of any permit for a commercial facility.

(1) Application.

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1 (A) New permits. Any application for a new or amended commercial facility  
2 permit filed after the original effective date of this subsection shall include:

3 (i) a written estimate of the maximum dollar amount necessary to close  
4 the facility prepared in accordance with the provisions of paragraph (4) of this subsection that shows all  
5 assumptions and calculations used to develop the estimate;

6 (ii) a copy of the form of the bond or letter of credit that will be filed  
7 with the Commission; and

8 (iii) information concerning the issuer of the bond or letter of credit as  
9 required under paragraph (5) of this subsection including the issuer's name and address and evidence of  
10 authority to issue bonds or letters of credit in Texas.

11 (B) Existing permits. Within 180 days of the original effective date of this  
12 subsection, the holder of any commercial facility permit issued on or before the original effective date of  
13 this subsection shall file with the Commission the information specified in subparagraph (A)(i) - (iii) of  
14 this paragraph.

15 (2) Notice and hearing.

16 (A) New permits. For commercial facility permits issued after the original  
17 effective date of this subsection, the provisions of §3.8 or §3.57 of this title (relating to Water Protection;  
18 and Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials), as applicable,  
19 regarding notice and opportunity for hearing, shall apply to review and approval of financial security  
20 proposed to be filed to meet the requirements of this subsection.

21 (B) Existing permits. Notice of filing of information required under paragraph  
22 (1)(B) of this subsection shall not be required. In the event approval of the financial security proposed to  
23 be filed for a commercial facility operating under a permit in effect as of the original effective date of this

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1 subsection is denied administratively, the applicant shall have the right to a hearing upon written request.

2 After hearing, the examiner shall recommend a final action by the Commission.

3 (3) Filing of instrument.

4 (A) New permits. A commercial facility permitted after the original effective date  
5 of this subsection may not receive oil field fluids or oil and gas waste until a bond or letter of credit in an  
6 amount approved by the Commission or its delegate under this subsection and meeting the requirements  
7 of this subsection as to form and issuer has been filed with the Commission.

8 (B) Existing permits. Except as otherwise provided in this subsection, after one  
9 year from the original effective date of this section, a commercial facility permitted on or before the  
10 original effective date of this subsection may not continue to receive oil field fluids or oil and gas waste  
11 unless a bond or letter of credit in an amount approved by the Commission or its delegate under this  
12 subsection and meeting the requirements of this subsection as to form and issuer has been filed with and  
13 approved by the Commission or its delegate.

14 (C) Extensions for existing permits. On written request and for good cause  
15 shown, the Commission or its delegate may authorize a commercial facility permitted before the original  
16 effective date of this subsection to continue to receive oil field fluids or oil and gas waste after one year  
17 after the original effective date of this section even though financial security required under this  
18 subsection has not been filed. In the event the Commission or its delegate has not taken final action to  
19 approve or disapprove the amount of financial security proposed to be filed by the owner or operator  
20 under this subsection one year after the original effective date of the section, the period for filing financial  
21 security under this subsection is automatically extended to a date 45 days after such final Commission  
22 action.

23 (4) Amount.

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1 (A) Except as provided in subparagraphs (B) or (C) of this paragraph, the amount  
2 of financial security required to be filed under this subsection shall be an amount based on a written  
3 estimate approved by the Commission or its delegate as being equal to or greater than the maximum  
4 amount necessary to close the commercial facility, exclusive of plugging costs for any well or wells at the  
5 facility, at any time during the permit term in accordance with all applicable state laws, Commission rules  
6 and orders, and the permit, but shall in no event be less than \$10,000.

7 (B) The owner or operator of one or more commercial facilities may reduce the  
8 amount of financial security required under this subsection for one such facility by the amount, if any, it  
9 filed as financial security under subsection (g)(6) of this section. The full amount of financial security  
10 required under subparagraph (A) of this paragraph shall be required for the remaining commercial  
11 facilities.

12 (C) Except for the facilities specifically exempted under subparagraph (D) of this  
13 paragraph, a qualified professional engineer licensed by the State of Texas shall prepare or supervise the  
14 preparation of a written estimate of the maximum amount necessary to close the commercial facility as  
15 provided in subparagraph (A) of this paragraph. The owner or operator of a commercial facility shall  
16 submit the written estimate under seal of a qualified licensed professional engineer to the Commission as  
17 required under paragraph (1) of this subsection.

18 (D) A facility permitted under §3.57 of this title (relating to Reclaiming Tank  
19 Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials) that does not utilize on-site waste  
20 storage or disposal that requires a permit under §3.8 of this title (relating to Water Protection) is exempt  
21 from subparagraph (C) of this paragraph.

22 (E) Notwithstanding the fact that the maximum amount necessary to close the  
23 commercial facility as determined under this paragraph is exclusive of plugging costs, the proceeds of  
24 financial security filed under this subsection may be used by the Commission to pay the costs of plugging



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any well or wells at the facility if the financial security for plugging costs filed with the Commission is insufficient to pay for the plugging of such well or wells.

(5) Issuer and form.

(A) Bond. The issuer of any commercial facility bond filed in satisfaction of the requirements of this subsection shall be a corporate surety authorized to do business in Texas. The form of bond filed under this subsection shall provide that the bond be renewed and continued in effect until the conditions of the bond have been met or its release is authorized by the Commission or its delegate.

(B) Letter of credit. Any letter of credit filed in satisfaction of the requirements of this subsection shall be issued by and drawn on a bank authorized under state or federal law to operate in Texas. The letter of credit shall be an irrevocable, standby letter of credit subject to the requirements of Texas Business and Commerce Code, §§5.101-5.118. The letter of credit shall provide that it will be renewed and continued in effect until the conditions of the letter of credit have been met or its release is authorized by the Commission or its delegate.

(m) Effect of outstanding violations.

(1) Except as provided in paragraph (2) of this subsection, the Commission shall not accept an organization report or an application for a permit or approve a certificate of compliance for an oil lease or gas well submitted by an organization if:

(A) the organization has outstanding violations; or

(B) an officer or owner of the organization, as defined in subsection (a) of this section, was, within seven years preceding the filing of the report, application, or certificate, an officer or owner of an organization and during that period, the organization committed a violation that remains an outstanding violation.

(2) The Commission shall accept a report or application or approve a certificate filed by an organization covered by paragraph (1) of this subsection if:

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(A) the conditions that constituted the violation have been corrected or are being corrected in accordance with a schedule agreed to by the organization and the Commission;

(B) all administrative, civil, and criminal penalties, and all plugging and cleanup costs incurred by the state relating to those conditions have been paid or are being paid in accordance with a schedule agreed to by the organization and the Commission; and

(C) the report, application or certificate is in compliance with all other requirements of law and Commission rules.

(3) All fees tendered in connection with a report or application that is rejected under this subsection are nonrefundable.

(n) Mandatory surcharges. The Commission adopts this subsection pursuant to Texas Natural Resources Code, §81.070, to impose reasonable surcharges as necessary on fees collected by the Commission that are required to be deposited to the credit of the Oil and Gas Regulation and Cleanup Fund, as provided by Texas Natural Resources Code, §81.067, in an amount sufficient to enable the Commission to recover the costs of performing the functions specified by Texas Natural Resources Code, §81.068, from those fees and surcharges. This subsection establishes the methodology the Commission shall use to determine the amount of the surcharge on each fee, as required by Texas Natural Resources Code, §81.070(c).

(1) For all fees subject to a surcharge under this section, the Commission shall employ a projected cost-based recovery methodology derived from budgeted cost projections approved by the Legislature in the General Appropriations Act, which is dependent upon revenue projections issued by the Comptroller in the most recent Biennial Revenue Estimate. In establishing the surcharge amounts, the Commission shall consider the factors and values set forth in the following subparagraphs.

(A) The Commission shall ascertain the time required to complete the regulatory work associated with the activity in connection with which the surcharge is imposed using the number of

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1 full-time equivalent positions (FTEs) appropriated by the Legislature for that purpose during the  
2 applicable biennium, multiplied by the work hours in a fiscal year, divided by the anticipated number of  
3 permit applications processed in a fiscal year.

4 (B) The Commission shall use the number of P-5 Organization Reports as a  
5 proxy to determine the number of individual or entities from which the Commission's costs may be  
6 recovered. An Organization Report is required to be filed and renewed annually by any organization,  
7 including any person, firm, partnership, corporation, or other organization, domestic or foreign, operating  
8 wholly or partially within this state, that performs operations within the jurisdiction of the agency.

9 (C) The Commission shall determine how the surcharge will affect operators  
10 considered to be large, based on operating more than 10,000 oil or gas wells; operators considered to be  
11 medium, based on operating more than 1,000 oil or gas wells, but fewer than 10,000 wells; and operators  
12 considered to be small, based on operating fewer than 1,000 oil or gas wells.

13 (D) The Commission shall consider the balance of the Oil and Gas Regulation  
14 and Cleanup Fund at the beginning of the fiscal year in which the surcharge is assessed.

15 (E) The Commission shall assume that the Legislature intended that the agency's  
16 oil and gas regulatory program should be self-funded. The Commission shall maintain an adequate  
17 balance in the Oil and Gas Regulation and Cleanup Fund such that the regulatory program can withstand  
18 a decrease in industry activity without sacrificing the health and public safety aspects of its regulatory  
19 work, while also having funds available to respond to any emergency related to oil and gas activity  
20 throughout the state. The Commission shall also maintain a fund balance that is within the statutory fund  
21 limits as determined by the Legislature.

22 (2) The Commission shall consider the factors set forth in paragraph (1) of this subsection  
23 to determine the surcharge applicable to all fees deposited to the Oil and Gas Regulation and Cleanup  
24 Fund in the following manner:

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1                               (A) the Commission shall first apply the premise that the oil and gas regulatory  
2 program should be self-funded;

3                               (B) the Commission shall then apply a cost-based recovery analysis to the  
4 funding levels determined by the Legislature. The Commission shall rely primarily on these two factors,  
5 but shall also review all factors and values set forth in subparagraph (A) of this paragraph; and

6                               (C) the Commission will apply the surcharge rate to all applicable fees as  
7 detailed in paragraph (3) of this subsection.

8                               (3) Based on the factors and methodology set forth in this subsection, the Commission  
9 has determined that a surcharge rate of 150 percent will be necessary on all fees required to be deposited  
10 to the credit of the Oil and Gas Regulation and Cleanup Fund.

11



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1 (4) The Commission shall review the surcharge rate determination under this subsection  
2 periodically but not less than each biennium to confirm that the imposed surcharge is reasonable.

3 This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be  
4 within the agency's authority to adopt.

5 Issued in Austin, Texas on September 15, 2015.

6 Filed with the Office of the Secretary of State on September 15, 2015.



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